

Introduced by Senator Wright
(Coauthor: Assembly Member Strickland)

February 23, 1999

An act to amend Section 1366 of the Civil Code, and to repeal and add Section 8724 of the Corporations Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 575, as introduced, Wright. Common interest developments.

Existing law, the Davis-Stirling Common Interest Development Act, prohibits the board of directors of a common interest development association from imposing regular or special assessments that exceed specified limits without a vote of the owners of the association, as specified. Assessment increases necessary for emergency situations, including an extraordinary expense required by a court order, are excepted from this limitation.

This bill would limit the applicability of the exception for extraordinary expenses required by court order, as specified. It would also make a technical, nonsubstantive change.

Existing law prohibits, without the approval of 100% of the members of an owners' association that is incorporated as a nonprofit mutual benefit corporation, the owners' association or any person acting on its behalf, that is obligated to provide management, maintenance, preservation, or control of a lot, parcel, area, apartment, or unit, from transferring all or substantially all of its assets or filing a certificate of dissolution.

This bill would revise and recast this provision to exempt the dissolution of the association from this prohibition if specified conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1366 of the Civil Code is
2 amended to read:

3 1366. (a) Except as provided in this section, the
4 association shall levy regular and special assessments
5 sufficient to perform its obligations under the governing
6 documents and this title. However, annual increases in
7 regular assessments for any fiscal year, as authorized by
8 subdivision (b), shall not be imposed unless the board has
9 complied with subdivision (a) of Section 1365 with
10 respect to that fiscal year, or has obtained the approval of
11 owners, constituting a quorum, casting a majority of the
12 votes at a meeting or election of the association
13 conducted in accordance with Chapter 5 (commencing
14 with Section 7510) of Part 3 of Division 2 of Title 1 of the
15 Corporations Code and Section 7613 of the Corporations
16 Code. For the purposes of this section, “quorum” means
17 more than 50 percent of the owners of an association.

18 (b) Notwithstanding more restrictive limitations
19 placed on the board by the governing documents, the
20 board of directors may not impose a regular assessment
21 that is more than 20 percent greater than the regular
22 assessment for the association’s preceding fiscal year or
23 impose special assessments which in the aggregate
24 exceed 5 percent of the budgeted gross expenses of the
25 association for that fiscal year without the approval of
26 owners, constituting a quorum, casting a majority of the
27 votes at a meeting or election of the association
28 conducted in accordance with Chapter 5 (commencing
29 with Section 7510) of Part 3 of Division 2 of Title 1 of the
30 Corporations Code and Section 7613 of the Corporations
31 Code. For the purposes of this section, quorum means
32 more than 50 percent of the owners of an association. This



1 section does not limit assessment increases necessary for
2 emergency situations. For purposes of this section, an
3 emergency situation is any one of the following:

4 (1) An extraordinary *repair or maintenance* expense
5 required by an order of a court.

6 (2) An extraordinary expense necessary to repair or
7 maintain the common interest development or any part
8 of it for which the association is responsible where a threat
9 to personal safety on the property is discovered.

10 (3) An extraordinary expense necessary to repair or
11 maintain the common interest development or any part
12 of it for which the association is responsible that could not
13 have been reasonably foreseen by the board in preparing
14 and distributing the pro forma operating budget under
15 Section 1365. However, prior to the imposition or
16 collection of an assessment under this subdivision, the
17 board shall pass a resolution containing written findings
18 as to the necessity of the extraordinary expense involved
19 and why the expense was not or could not have been
20 reasonably foreseen in the budgeting process, and the
21 resolution shall be distributed to the members with the
22 notice of assessment.

23 ~~(4) An extraordinary expense in making the first~~
24 ~~payment of the earthquake insurance surcharge pursuant~~
25 ~~to Section 5003 of the Insurance Code.~~

26 (c) The association shall provide notice by first-class
27 mail to the owners of the separate interests of any
28 increase in the regular or special assessments of the
29 association, not less than 30 nor more than 60 days prior
30 to the increased assessment becoming due.

31 (d) Regular and special assessments levied pursuant to
32 the governing documents are delinquent 15 days after
33 they become due. If an assessment is delinquent the
34 association may recover all of the following:

35 (1) Reasonable costs incurred in collecting the
36 delinquent assessment, including reasonable attorney's
37 fees.

38 (2) A late charge not exceeding 10 percent of the
39 delinquent assessment or ten dollars (\$10), whichever is
40 greater, unless the declaration specifies a late charge in

1 a smaller amount, in which case any late charge imposed
2 shall not exceed the amount specified in the declaration.

3 (3) Interest on all sums imposed in accordance with
4 this section, including the delinquent assessment,
5 reasonable costs of collection, and late charges, at an
6 annual percentage rate not to exceed 12 percent interest,
7 commencing 30 days after the assessment becomes due.

8 (e) Associations are hereby exempted from
9 interest-rate limitations imposed by Article XV of the
10 California Constitution, subject to the limitations of this
11 section.

12 SEC. 2. Section 8724 of the Corporations Code is
13 repealed.

14 ~~8724. Without the approval of 100 percent of the~~
15 ~~members, any contrary provision in this part or the~~
16 ~~articles or bylaws notwithstanding, so long as there is any~~
17 ~~lot, parcel, area, apartment or unit for which an owners~~
18 ~~association (as defined in Section 11003.1 of the Business~~
19 ~~and Professions Code and created in connection with any~~
20 ~~of the forms of development referred to in Section 11004.5~~
21 ~~of the Business and Professions Code) is obligated to~~
22 ~~provide management, maintenance, preservation or~~
23 ~~control:~~

24 ~~(a) The owners association or any person acting on its~~
25 ~~behalf shall not:~~

26 ~~(1) Transfer all or substantially all of its assets; or~~

27 ~~(2) File a certificate of dissolution; and~~

28 ~~(b) No court shall enter an order declaring the owners~~
29 ~~association duly wound up and dissolved.~~

30 SEC. 3. Section 8724 is added to the Corporations
31 Code, to read:

32 8724. (a) Notwithstanding any contrary provision in
33 the governing documents of a common interest
34 development, so long as there is any lot, parcel, area,
35 apartment, or unit for which an incorporated association
36 is obligated to manage, maintain, preserve, or control, the
37 association may not do either of the following without the
38 approval of 100 percent of the members:

39 (1) Transfer all or substantially all of its assets.

40 (2) File a certificate of dissolution.

1 (b) No court shall enter an order declaring the
2 association duly wound up and dissolved.

3 (c) Notwithstanding subdivision (a), an association
4 may be dissolved pursuant to Chapter 15 (commencing
5 with Section 8510), Chapter 16 (commencing with
6 Section 8610), and Chapter 17 (commencing with Section
7 8710) if all of the following conditions are met:

8 (1) The association is insolvent.

9 (2) Alternate arrangements have been made to
10 provide for the continuing management, maintenance,
11 preservation, or control of any lots, parcels, areas,
12 apartments, or units that the association is otherwise
13 obligated to manage, maintain, preserve, or control.

14 (3) A majority of all the members of the association
15 approve the dissolution.

16 (d) For purposes of this section, “common interest
17 development,” “association,” and “governing
18 documents” shall have the same meaning as these terms
19 are defined in Section 1351 of the Civil Code.

